

REMARKS

Claims 49-55 and 59 are pending in this application. Claims 49, 52 and 59 have been amended. The amendment to claim 52 was made to improve the clarity of the claim in view of the amendment to claim 49. No substantive change was intended. The amendments to the other claims will be more fully discussed below. No new matter has been added.

Applicants would like to thank the Examiner for the courtesies extended to the Applicants representative during a personal interview on May 5, 2004, during which the specification, the then-pending claims, and potential claim amendments were discussed.

Applicants also thank the Examiner for acknowledging the withdrawal of the obviousness-type double patenting rejections in view of the submitted terminal disclaimer and the withdrawal of the prior art rejections.

Entry of this amendment is proper under 37 C.F.R. §1.116 because this amendment: (a) places the application in condition for allowance (for the reasons discussed herein); (b) does not raise any new issue requiring further search and/or consideration because the amendment amplifies issues previously discussed throughout prosecution; (c) does not add claims without deleting an appropriate number of claims and (d) places the application in better form for appeal, should appeal be necessary. This amendment is necessary and was not earlier presented because it is made in response to arguments raised in the final rejection. Entry of this amendment is thus respectfully requested.

The foregoing amendments are taken in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicant would otherwise be entitled in view of the prior art.

By amending the application, the Applicants do not concede that the patent coverage available to them would not extend as far as the original claim. Rather, Applicants reserve the right to file a continuation application to pursue the breadth of the claims as filed. Applicants believe that the Examiner has not made a sufficient showing of inherency of the teachings of the asserted prior art, especially given the lack of teachings in the cited references of the properties that Applicants have recited in their claims.

Further, by the present amendment, it does not follow that the amended claims have become so perfect in their description that no one could devise an equivalent. After amendment, as before, limitations in the ability to describe the present invention in language in the patent claims naturally prevent the Applicants from capturing every nuance of the invention or describing with complete precision the range of its novelty or every possible equivalent. See, Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., 62 USPQ2d 1705 (2002). Accordingly, the foregoing amendments are made specifically in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicants would otherwise be entitled.

Rejection of claims 49-55 and 59 under 35 U.S.C. §112, second paragraph

The Examiner rejected claims 49-55 and 59 under 35 U.S.C. §112, second paragraph as omitting necessary components of the invention. This rejection is believed rendered moot in view of the forgoing amendments to claims.

The Examiner argued that 'screening' in the preamble breathed life into the claim and thus was properly considered as an element of the claim. With such a construction, the Examiner argued that the method steps were not properly linked to each other.

In view of this, the Applicants have made two substantive claim amendments. In claim 49, Applicants added a 'relating' step that connects the monitored force with a physical property. Applicants assert that the amendment provides proper linking among the claim elements.

In claim 59, Applicants reproduced claim 49 (before the current amendment) and replaced 'screening' in the preamble with 'monitoring'. Applicants assert that by replacing screening in the preamble with monitoring, any linking issue among the claim elements and the preamble is eliminated.

Further, Applicants assert that such an amendment to claim 59 is proper after final amendment and would not require an additional search or consideration the part of the Examiner. The use of monitoring in the preamble repeats the use of monitoring from the body of the claim. Irrespective of whether the preamble is an element of the claim, the Examiner has previously considered the monitoring step from the body of the claims and thus no new issues are introduced through this amendment.

CONCLUSIONS

Accordingly, Applicants submit that the present application is in condition for allowance and requests that the Examiner pass the case to issue at the earliest convenience. Should the Examiner have any question or wish to further discuss this application, Applicant requests that the Examiner contact the undersigned at cvoci@patentco.com or (248) 593-9900.

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